

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DSI ASSIGNMENTS, LLC, SOLELY  
AS ASSIGNEE FOR THE BENEFIT OF  
CREDITORS OF PEARL  
AUTOMATION INC.,

Plaintiff,

v.

AMERICAN ROAD PRODUCTS, INC.,  
et al.,

Defendants.

Civil Action No. 1:17-cv-11963

**MOTION TO DISMISS COUNTERCLAIMS**

Plaintiff DSI Assignments, LLC, Solely as Assignee for the Benefit of Creditors of Pearl Automation Inc. (“DSI”) requests that this Court dismiss the counterclaims filed by American Road Products, Inc. (“ARP”).<sup>1</sup> ARP does not allege any actionable conduct by DSI in its own name. Instead, all of ARP’s counterclaims are based on Pearl’s alleged breaches of the Purchase Order. ARP cannot recover against DSI, as assignee, for Pearl’s alleged breaches or other misconduct. As assignee for the benefit of Pearl’s creditors, DSI’s sole responsibility is to marshal and liquidate Pearl’s assets for distribution to Pearl’s creditors. Pearl’s assignment of all of its right, title and interest in its assets to DSI did not impose any obligation on DSI to fulfill, or to become liable for, any of Pearl’s contractual duties to third parties such as ARP. ARP therefore has not stated any claims against DSI, as Pearl’s assignee, upon which relief can be granted.

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<sup>1</sup> Defendants Installernet, Inc. and Anthony Frangiosa are not named as plaintiffs-in-counterclaim with respect to ARP’s counterclaims. To the extent they attempt to recover on the counterclaims in their own names at any later point, they would be barred from recovery for the same reasons that prevent any recovery by ARP.

WHEREFORE, the Plaintiff, DSI Assignments, LLC, Solely as Assignee for the Benefit of Creditors of Pearl Automation Inc. requests that the Court dismiss ARP's Counterclaims in their entirety pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state any claim upon which relief can be granted.

Respectfully submitted,

DSI ASSIGNMENTS, LLC, SOLELY  
AS ASSIGNEE FOR THE BENEFIT  
OF CREDITORS OF PEARL  
AUTOMATION INC.

By its attorneys,

/s/ Michael P. Connolly  
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Dated: July 6, 2018

**LOCAL RULE 7.1 CERTIFICATION**

In accordance with Local Rule 7.1, I hereby certify that counsel for DSI Assignments, LLC, Solely as Assignee for the Benefit of Creditors of Pearl Automation Inc. has conferred with counsel to Defendants before filing this motion in an attempt to resolve or narrow the issues contained therein.

/s/ Michael P. Connolly

Michael P. Connolly

**CERTIFICATE OF SERVICE**

I, Michael P. Connolly, hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 6, 2018.

/s/ Michael P. Connolly

Michael P. Connolly